- *All files related to the receipt and resolution of compliance-related consumer complaints archived by the institution or the FDIC, including information from the FDIC's automated complaint tracking system (Specialized Tracking and Reporting System [STARS]);*
- *Written management and Board response and follow-up to internal and external audits;*
- *Agreements with outside vendors for compliance services and educational material;*
- *Institution organizational chart and management résumés; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

Procedures

1. Review Board and committee minutes. Review of these documents should give the examiner an indication of the following:
   - Extent of Board oversight/involvement in assuring compliance with consumer protection and fair lending laws and regulations.
   - Training of Directors and senior management regarding compliance and fair lending issues.
   - Rationale for implementing new policies or procedures or modifying existing ones.
   - Any negative comments on rejected loan applications during loan committee or any other meeting (such records must be traced to the specific loan file to assure that no unlawful disparate treatment or discrimination was involved in the denial).
   - Consideration of new loan or deposit products and strategies for their implementation.
   - Consideration of new software or software vendors.
   - Consideration of third parties for compliance audit.
   - Approval of, and rationale for, branch openings and closings.
   - Whether the Board documented a review of the prior Report that included, as applicable: a discussion of recommendations for policy changes, an adoption of those revisions, and a report regarding corrective action and subsequent testing for identified violations
2. Based on the material reviewed during PEP and on-site, and based on discussions with management, answer the following questions:
   - What is the bank's business strategy and what are the compliance implications of that strategy (for example, elevated risk due to rapidly growing subprime lending, cutting-edge e-banking activities, etc.)?
   - What particular compliance-related areas does management feel are weak or in need of review?
   - Have the Board and senior management worked to foster a positive climate for compliance?
   - Has management allocated the appropriate level of resources to compliance?
   - Does the institution have a designated compliance officer and/or compliance committee? If not, is the absence of an officer or committee significant in light of the institution's resources and risk profile?
   - Has management ensured that the compliance officer(s) and/or compliance committee has the appropriate level of authority and accountability to effectively administer the institution's compliance management system?
   - Has management responded appropriately and promptly to consumer complaints?
   - Has management responded appropriately to deficiencies noted and suggestions made at previous examinations and audits?
   - How does management stay abreast of changes in regulatory requirements and other compliance issues? Is this method appropriate in light of the institution's resources and risk profile?
   - How does management ensure that the institution's staff stays abreast of changes?
   - How does management ensure that compliance is considered as part of new product and service development, marketing, and advertising?
   - How does management ensure that due diligence is performed prior to changing software or software vendors or third party audit providers?
   - What is the level of management's knowledge of compliance issues?
   - Does the review of the Board and/or Compliance Committee minutes indicate a reasonable level of Board involvement?
   - Is the Board aware that it is ultimately responsible for the institution's compliance management system?
3. Develop and document a preliminary assessment of the institution's performance related to this area. Is management oversight generally strong, adequate, weak? On what is this assessment based?

Evaluating the Compliance Program

Policies and Procedures

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to policies and procedures, including the institution's business strategy, product offering, branches, etc.;*

- *Compliance-related policies and other written compliance procedures;*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

Policies and procedures, whether written or unwritten, should cover all of the areas listed below. A financial institution may have other policies or procedures related to compliance not listed here that should be included in the examiner's review, depending on the institution's activities and risk profile.

- Compliance Policy – This may be a single document or a compilation of various documents each relating to specific areas of institution activity. In addition to specific guidance on daily compliance activities, the policy should provide for an adequate level of responsibility and authority for the compliance officer, compliance committee, and individual employees.
- Lending – Often, institutions will have separate policies for various lending types such as consumer, real estate, commercial, agricultural, etc. All should be reviewed during PEP.
- Deposits – Institutions often have separate policies for Regulation DD, Regulation E, Regulation CC, and Part 329.
- Electronic Banking – The adequacy of e-banking policies should be assessed in light of the level of activity in which the institution is engaged.
- Privacy – Institution privacy policies and procedures vary widely, depending on the level of information sharing involved.
    - Non Deposit Products – Policies and procedures must provide adequate guidance for the sale of investment and insurance products by bank employees (including loan officers who sell insurance during the loan process), dual employees, and on-site non-employee brokers.
    - Branch Closing Policy – Section 42 of the Federal Deposit Insurance Act requires every financial institution to maintain a branch closing policy.

In order to ensure an accurate assessment of the institution's compliance management system, each policy and procedure must be reviewed during PEP or at the institution unless all the following are true: 1) the policy was reviewed at the prior FDIC compliance examination, 2) the review of the policy at the prior examination found no deficiencies, 3) no changes or amendments have been made since the policy was last reviewed, and 4) there have been no significant regulatory or operational changes pertinent to the area covered by the policy since the prior examination.

1. Conduct sufficient documentation reviews and management discussions to answer the following questions.
    - What areas of compliance do written policies or procedures cover?
    - Which policies or procedures are unwritten?
    - Is the use of unwritten policies/procedures adequate for the institution's needs?
    - Do the policies give effective guidance to institution employees?
    - Are policies and procedures structured and implemented in such a way as to ensure fair and equitable treatment of all consumers?
    - Do the policies assign compliance responsibility? Are the assignments logical and reasonable given the time and resources available to those employees?
    - Do the policies provide appropriate authority to employees responsible for identifying and correcting deficiencies?
    - Are the policies and procedures established in such a way as to ensure a smooth transition in the case of key personnel turnover?
    - Are policies, procedures, and standardized forms periodically reviewed and updated in response to regulatory changes and changes in the institutions risk profile? How frequent are the reviews?
    - Does the Board review and approve all changes to policies and procedures? If not, is the level of approval appropriate given the examiner-determined institution risk profile?
    - Are there any practices that have become policy by virtue of the frequency of their occurrence? If so, do these practices conflict with formal policies or procedures?

NOTE: Additional guidance for the review of loan and appraisal policies is located in the Fair Lending Examination Procedures.

2. Determine whether the institution's policies and procedures provide the appropriate level of guidance for all employees and include clearly defined goals and objectives.
3. Develop and document a preliminary assessment of the institution's performance related to this area. Are policies and procedures considered generally strong, adequate, or weak? On what is this assessment based?

Training

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to training;*
- *Compliance-related training documentation;*
- *Examiner notes from discussions with compliance officer, senior managers, etc.*

1. Review the institution's training records and have sufficient discussions with management to answer the following questions:
   - Does every employee receive appropriate training given his or her compliance responsibilities?
   - How often is training conducted? Is the frequency of training acceptable?
   - Is the training program continuously updated to incorporate accurate, complete information on new products and services, regulatory changes, emerging issues, etc.?
   - Is the effectiveness of the training evaluated by management through delayed testing, before-and-after work product reviews, or other means?
   - Regardless of whether staff training is conducted primarily in-house or is out-sourced, does management evaluate whether the institution's training needs are being met? As EIC, do you agree or disagree with management's conclusions?
2. Develop and document a preliminary assessment of the institution's performance related to this area. Is the institution's training considered generally strong, adequate, or weak? On what is this assessment based?

Monitoring

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to monitoring;*
- *Compliance-related policies and other written compliance procedures;*
- *Documentation of the results of monitoring activities;*
- *Formal and/or informal reports to management of the findings, corrective actions, and related follow-up from monitoring procedures; and*
- *Examiner notes from discussions with the compliance officer, senior manager, etc.*

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
   - What monitoring systems are in place for loan transactions? Deposit transactions? Investment and insurance sales activities?
   - Is every transaction subject to monitoring? If not, what is the level of transactional review? Is the level of monitoring adequate?
   - Does monitoring include a review of the performance by third party service providers?
   - Are the appropriate personnel conducting the monitoring (i.e. someone with daily involvement in the monitored area and who has received adequate training)?
   - How are errors that are identified during the monitoring process documented?
   - How are the errors corrected?
   - Is there appropriate follow-up when errors are identified (i.e. refresher training, disciplinary action)?
2. Determine whether the institution's monitoring efforts encompass all applicable regulations.
3. Develop and document a preliminary assessment of the institution's performance related to this area. Is the institution's monitoring effort generally strong, adequate, or weak? On what is this assessment based?

Consumer Complaint Response

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to consumer complaints;*
- *Consumer complaint policy or other written compliance procedures regarding complaints;*
- *All files related to the receipt and resolution of compliance-related consumer complaints archived by the institution or the FDIC, including information from the FDIC's automated complaint tracking system (STARS);*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
   - Has the institution implemented policies and procedures to handle consumer complaints?
   - If policies and procedures are in place, do they comply with all regulatory requirements regarding complaints (maximum time limits for response, documentation requirements, etc.)?
   - If the institution has received consumer complaints, have all complaints been resolved satisfactorily?
   - Cross-referencing the complaints to all other areas of the compliance management system, does the type or

quantity of complaints suggest any other areas in need of in-depth review?

2. Develop and document a preliminary assessment of the institution's performance related to this area. Are the institution's consumer complaint response processes generally strong, adequate, weak? On what is this assessment based?

Evaluating the Audit Function

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to the audit function.*
- *Audit policy, external audit agreement, or other written audit guidelines;*
- *Compliance-related internal and external audit reports, responses, and follow-up;*
- *Internal and external audit workpapers;*
- *Institution organizational chart;*
- *BOD minutes and compliance committee minutes; and*
- *Examiner notes from discussions with audit staff, compliance officer, senior managers, etc.*

Exception: Do not request fair lending self-testing reports (or results). If, however, a financial institution voluntarily provides documentation of its fair lending self-testing, review the findings as part of the fair lending examination.

NOTE: A financial institution's audit or review of loan files, internal policies, and training material may indicate difference in the treatment of applicants that could constitute a violation of the fair lending laws.

1. Conduct documentation review and have sufficient discussions with management to answer the following questions:
   - Are internal audits conducted? How often and by whom?
   - If internal audits are conducted, is the auditor independent of the transaction being audited? If not, is this considered acceptable considering the institution's resources and risk profile?
   - Are external audits conducted? How often and by whom?
   - Are internal/external audits comprehensive in scope? If audits are not comprehensive, do they cover all areas of significant risk? Do they include reviews at every branch location?
   - Are audit findings compiled in writing? Do they identify the nature and circumstances (i.e., cause, time period, etc.) of the identified exceptions? Do they provide management enough information to (1) determine cause and (2) formulate an appropriate corrective action?
   - Are internal/external audits of sufficient quality?
   - Are the audit findings communicated to the Board either directly or through the compliance committee?
   - Have audit report findings been appropriately addressed by the Board and senior management in a timely manner and include corrective actions and follow-up efforts?
   - Are written audit reports readily available for examiner review?
2. Develop and document a preliminary assessment of the institution's performance related to this area. Is the audit function generally strong, adequate, or weak? On what is this assessment based?

Transaction Sampling and Testing

After analyzing the CMS elements in relationship to a bank's operational risks, the EIC must decide what transaction sampling and testing is necessary. The number of transactions and the particular regulatory requirements to be reviewed should be carefully tailored to weaknesses identified in the CMS as it relates to specific operational areas. For example, if there is a weakness in monitoring the calculation of Annual Percentage Rates (APRs) in open-end credit transactions, then a sample of those calculations should be tested; it would not be necessary to test all Truth in Lending Act (TILA) requirements.

The severity of CMS weakness and operational risk will dictate the intensity of transaction testing; greater weakness and higher risk will generally lead to the review of more transactions. If the examiner finds a moderate degree of risk, then sufficient testing should be done to support a conclusion. Depending on the importance of an element, the examiner may find it appropriate to spot-check a couple of transactions to support a favorable conclusion. If no transaction testing in a particular regulatory area was done in the previous examination, then at least a spot-check should be done at the current examination, even if there are no risk indicators. In certain cases, however, management's admission that a violation occurred is sufficient to warrant the citation without transaction testing. This also negates the need to list specific transactions in the Report of Examination (ROE).

When transaction sampling and testing is conducted, the examiner should tailor the actual sample and test to the identified weakness. If testing is not considered necessary to support conclusions about an element of the CMS or with respect to a particular operational area, appropriate documentation should be retained in the workpapers and